IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.1011 OF 2007

Air India Ltd. .. Petitioner.
Vs.
Maruti J.Kurade & Anr. .. Respondents.

Mr.Saluja i/b Mr.M.V.Kini & Co.for the petitioner.
Ms.Tanu Mehta Tiwari i/b Ranjana Todankar for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 31ST JULY, 2007.

P.C.:

. Heard learned counsel for the parties.

2. This writ petition is directed against the judgment and order dated 6th October, 2006 passed by the Presiding Officer on an application at Exhibit-8 in Approval Application No.CGIT-2/11 of 2005 by which the application filed by the respondent-employee has been allowed. The operative part of the order reads thus:

> "(a) Application is partly allowed.
> (b) Air India Ltd. is directed not to disturb its Workman Kurade from his staff quarter and avail medical facilities as well as give suspension allowances from the date of this order till approval application is disposed of on merits by this Tribunal.
> (c) the prayer of Workman Kurade to provide work is rejected.
> (d) parties to appear in Lok Adalat to see that dispute can be settled amicably which is fixed on 30th October, 2006.
> (e) In the circumstances there is no order as to its costs."

3. Mr.Saluja, learned counsel for the petitioner

challenged the direction given to the petitioner to give suspension allowances to the workman from the date of the order till the approval application is disposed of. He did not challenge other part of the operative order. He placed heavy reliance upon the judgment of the Division Bench of this Court in **Air India Ltd. Vs. Mr.Libio Francisco Colaco & Anr. in Appeal LD.No.351 of 2003 in Writ Petition No.813 of 2003 decided on 30th June, 2003**. He submitted that respondent no.1 falls in the first category of cases as enumerated in paragraph 20 of the judgment and there would be no justification for providing payment of subsistence allowance to him.

4. I perused the aforesaid judgment and more particularly paragraphs 19 and 20 thereof. The Division Bench after considering several judgments of the Supreme Court and High Courts in paragraph 20 carved out three categories of the workmen while deciding whether the dismissed employee against whom application is filed by the employer under section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval to the imposition of penalty of dismissal from service is entitled to subsistence allowance pending the final disposal of the said application. The first category carved out by the Division Bench, who are not entitled for subsistence allowance, is of

the workmen who are dismissed for misconduct after due inquiry and on scrutiny by the Labour Court or the Tribunal, as the case may be and against whom the enquiry is found to be valid. In the present case the penalty of dismissal from service after holding inquiry has not been scrutinised and so far the enquiry has not been held to be valid by the Labour Court. The Approval Application is pending. There is no dispute that pending hearing of the approval application, the Labour Court or the Tribunal has power to pass interim order. In my opinion the judgment of the Division Bench relied upon by the petitioner is of no avail to the petiioner. In the circumstances the order impugned in the writ petition needs no interference.

5. Ms.Tiwari, learned counsel for the respondent-workmen has fairly stated that the respondent-workmen has so far not withdrawn his terminal benefits which admittedly are more than Rs.4-5 lacs and that he would not withdraw the same till disposal of the approval application under section 33(2)(b) of the Act. Her statement is accepted. This should take care of the monetary interest of the petitioners. Keeping that in view and considering the overall facts and circumstances of the case no interference under Article

226 of the Constitution of India is warranted. The writ petition is, accordingly, dismissed. Respondent No.2 - the Presiding Officer, Central Government Industrial Tribunal, shall endeavour to dispose of the approval application as expeditiously as possible and preferrably within a period of three months from the date of receipt of this order. The parties are directed to co-operate disposal of the application within the time frame. The writ petition is disposed of.

(D.B.BHOSALE, J.)